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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,740	06/21/2001	John Joseph Curro	7897R4	6713

27752 7590 01/06/2004

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 01/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/886,740

Applicant(s)

CURRO ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.104(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4e) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)    4) ☐ Interview Summary (PTO-413) Paper Not(s). \_\_\_\_\_.
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper Not(s) \_\_\_\_\_                      6) ☒ Other: *Petition Decision*.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Amendment submitted on September 29, 2003, has been entered. Claims 1 – 3 have been amended and claims 4 – 7 have been added. Therefore, the pending claims are 1 – 7.
2. The Affidavit under 37 CFR 1.132 filed September 29, 2003 is insufficient to overcome the rejection of claims 1 – 9 based upon Srinivasan et al. (5,567,501) or Palumbo (WO 96/10979) as set forth in the last Office action because: The affidavit did not include all the described figures and therefore was incomplete. Figure 1, described as a bonded nonwoven fabric with a bond site aspect ratio of 1:1, was the same picture as Figure 3, described as a bonded nonwoven fabric with a bond site aspect ratio of 10:1. Further, the Examiner's copy of Figure 5 has poor resolution and the apertures and bond sites, or lack thereof, cannot be clearly discerned in the picture. Thus, the figures could not be compared to each other, or establish that the aspect ratio of the bond site is critical to the nonwoven structure and demonstrate unexpected results for an aspect ratio of at least 3.

Additionally, the Affidavit refers only to the general invention in the present application and not to the product produced by the prior art or the scope of the individual claims of the application. Thus, the Affidavit is not commensurate in scope with the claims. In other words, the claims recite an apertured nonwoven fabric with three layers where the bond sites have an aspect ratio of 3. However, the Affidavit shows that the aspect ratio is critical to an apertured nonwoven laminates produced by forming bond sites and then applying a force to stretch the nonwoven fabric and rupture the bond sites. Since the prior art is produce by a different method, then the evidence that the aspect ratio is critical to the Applicant's method is not

commensurate in scope with the claims since the method of forming the apertures is not claimed. Further, the Affidavit is not commensurate in scope with the present claims since the Applicant uses examples having an aspect ratio of 1:1, 5:1, 10:1 and 30:1, while the claims are drawn to an aspect ratio of 3:1. Thus, evidence that a bonded web with bond sites having an aspect ratio of 5:1 produces apertures only at the bond sites is not sufficient to demonstrate that a bonded web with bond sites having an aspect ratio of 3:1 would only produce apertures at the bond sites as well. Therefore, the Affidavit is not sufficient to overcome the rejections.

3. The drawings corrections and the amendments to the specification are sufficient to overcome the objections to the drawings set forth in sections 1 – 3 of the previous Office Action.
4. The 35 USC 103 rejection based on Srinivasan et al. (5,851,935) in view of McCormack et al. (5,964,742) is withdrawn since McCormack et al. discloses that the bond sites having an aspect ratio greater than 2 are for use in single layer self-bonded fabrics and should be distinguished from patterns made to laminate materials together (column 11, lines 1 – 3). Therefore, one of ordinary skill in the art would not rely on the teaching in McCormack et al. to change the shape of the bond sites in Srinivasan et al.

#### *Drawings*

5. The drawings were received on October 2, 2003. All the drawings, except for Figure 8, are approved. Figure 8 is still all black and it is not clear what the lines are pointing to.

#### *Terminal Disclaimer*

6. The terminal disclaimer filed on September 29, 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US

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Application Number 09/886,730, 09/886,828, 09/886,829, 09/467,938, 09/584,676, 09/553,641, and 09/553,871 has been reviewed and is accepted. The terminal disclaimer has been recorded.

*Claim Objections*

7. Claims 1 – 3 are objected to because of the following informalities: the phrase “a second web joint to said first web” is grammatically awkward. Appropriate correction is required.

*Claim Rejections - 35 USC § 103*

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1 – 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo (WO 96/10979).

The features of Palumbo have been set forth in the previous Office Action. Claims 1 – 3 are rejected for the reasons of record. Palumbo discloses that the outer layers are made from the same material. Therefore, claim 5 is also rejected.

10. Claims 1 – 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson et al. (5,628,097).

Benson et al. discloses a nonwoven web which is weakened at a plurality of locations so that when a tensioning force is applied to the nonwoven web, the weakened locations rupture to produce a plurality of apertures (abstract). The nonwoven web can be a single nonwoven web made from bonded carded webs, spunbonded webs, meltblown webs, or multiple layers of these nonwoven webs (column 2, lines 60 – 65). Benson et al. discloses that the bonded and apertured nonwoven web used as the topsheet can be made from nonwoven laminates such as spunbond/meltblown/spunbond (SMS) laminates instead of a single nonwoven layer (column 7,

lines 27 – 35). Thus, the three-layer bonded SMS nonwoven material would correspond to the applicant's invention with the two outer spunbond nonwoven layers, corresponding to the Applicant's first and second webs, and the middle, meltblown layer would be disposed in the void space between the two outer layers. In this case, both the outer spunbond layers would be made from the same material and have bond sites.

Further, Benson et al. teaches that the bond sites are formed by protuberances 116 which can be elliptical, circular, square or rectangular in shape (column 8, lines 28 – 35). As shown in Figure 3, the protuberances and the bond sites produced are narrow and elliptical in shape. While Benson et al. fails to explicitly teach an aspect ratio of greater than 3, the bond site shown in Figure 3 is long and narrow. Even though one of ordinary skill in the art cannot use the figures to determine the exact size of the bond sites, the picture clearly shows that long and narrow bond sites are used to produce the apertured nonwoven web. Therefore, based on the disclosure and figures taught by Benson et al. it would have been obvious to one of ordinary skill in the art to choose a bond site with an aspect ratio of greater than 3 and a thickness of less than 0.020 inches in the bonded nonwoven fabric taught by Benson et al. since the figure teaches using bond sites which are long and narrow. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose an aspect ratio of greater than 3 and a thickness of less than 0.020 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). Thus, claims 1 – 3, 5 and 7 are rejected.

Also, Benson et al. discloses that laminates with film layers can also be bonded together (column 7, lines 42 – 45). Therefore, it would have been obvious to one of ordinary skill in the art to use a film layer as an outer layer in the multi-layer laminate structure taught by Benson et al. since Benson et al. discloses that films can be used as layers in the laminate structures. Therefore, claim 4 is rejected.

***Response to Arguments***

11. Applicant's arguments filed September 29, 2003 have been fully considered but they are not persuasive. The Applicant argues that based on the Affidavit provided, the rejections based on Palumbo should be withdrawn. However, as set forth above the affidavit was found insufficient. Particularly, the Affidavit argues that the aspect ratio is critical to the process to produce an aperture nonwoven. The Applicant does not address the structure of the apertured nonwoven as it compares to the structure of the apertured nonwoven fabrics taught by the prior art. Changing the size of the aperture in the nonwoven fabric taught by Palumbo, would not destroy the invention or produce any unexpected results. Instead, the final product would have different size openings which would effect the amount of air or fluid which is allowed to pass through the nonwoven itself. Further, it has been found that a modification involving a mere change in the size of a component is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Since the Applicant argues that the bond site aspect ratio is critical to the process of making the nonwoven material, the Applicant would need to include method limitations which in commensurate in scope with the arguments in the affidavit.

***Allowable Subject Matter***

12. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: While Benson et al. discloses using the bonded laminate in an absorbent article, Benson et al. fails to teach or fairly suggest placing an absorbent airlaid web layer between the individual layers in the bonded nonwoven fabric which is used as a cover sheet and should be designed to let liquid flow quickly through, into the center and not trap liquid in the top layer of an absorbent article. Thus, it would not have been obvious to one of ordinary skill in the art to put any absorbent material between the outer layers of the bonded laminate.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472.

The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0994.

Jenna-Leigh Befumo  
December 22, 2003



CHERYL A. NISKA  
PRIMARY EXAMINER